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Estate Planning: 101

How You Can Benefit From The Basics

Web Seminar
July 17, 2008



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Why do you need an estate plan?

Gold Medal Goal:
Assure the desired distribution of your assets at your death

And the Silver and Bronze Medal Goals are:

2. Avoiding probate [Medals.bmp](#)
3. Avoiding guardianship proceedings
4. Avoiding or reducing estate taxes




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Goal 1: Assuring the desired distribution of assets



America's most famous signatory... forgot to sign his own will!

John Hancock wanted to give to the State of Massachusetts his mansion for use by the State as a Governor's residence. But, since he failed to sign his will before his death, the mansion went instead to his heirs who, years later, attempted to sell it to the State at an inflated price. Unfortunately, the mansion was demolished in 1863.

John Hancock

With careful estate planning, this patriot's wishes for his residence could have been fulfilled.

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Goal 2: Avoiding Probate

What is Probate? The court-supervised distribution of your estate. Probate can be more or less time and money consuming, depending upon the size of your estate and how well your loved ones get along!

The estate of an American hero was reduced by probate litigation!

After her death, Mrs. Parks' nephew prolonged the probate administration of her estate by filing actions in the probate court seeking review of her finances and possessions.

With proper planning, this civil rights activist's estate and intended heirs could have been spared the expense of defending these probate claims.




Rosa Parks

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Goal 3: Avoiding Guardianship Proceedings



Britney Spears

What is Guardianship? Court proceedings in which one person is given the power to make decisions for another who is deemed incompetent to do so for him or herself.

The father of America's biggest pop star was forced to look to the courts to help his daughter stop her downward spiral into alleged mental illness and drug use!

Britney's father, Jamie, obtained control of his daughter's financial, medical and legal decisions this past winter.

With a plan in place, a protracted legal battle could have been avoided.

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Goal 4: Avoiding or Reducing Estate Taxes

What is the estate tax? A tax on the net value of your estate prior to any distributions to your heirs.

Paris Hilton has led a life of privilege due, in part, to very sound estate tax planning!

America's richest families have likely saved BILLIONS with sound estate tax planning.

Tax attorneys can help you retain your wealth so that one day your children can become famous for being famous.



Paris Hilton

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How do we help John Hancock, Rosa Parks and Britney Spears to assure desired distribution of assets, avoid probate and avoid guardianship proceedings?

-by giving them a six-pack!

Also known as executing the six "Core Estate Plan Documents" (known as the six-pack), including:


- Revocable Living Trust
- Pour-Over Will
- Power of Attorney for Property
- Power of Attorney for Healthcare
- Living Will
- HIPAA Authorization



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Six-Pack Document #1: Revocable Living Trust



Centerpiece

The Revocable Living Trust is the centerpiece of an effective estate plan.

You control your property through your trust the same as if you owned it individually.

When you die, the property is distributed per your wishes without the need for probate.

The execution of a Revocable Trust could have assured John Hancock's intended disposition of his mansion and could have avoided a messy probate litigation over Rosa Parks' estate.


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Six-Pack Document #2: Pour-Over Will

The Pour-Over Will is the safeguard for the distribution of your assets.

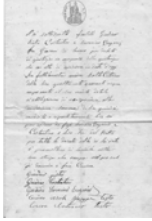
If, at your death, any of your assets are not held in trust or otherwise transferred to your intended beneficiaries, this document directs such assets to be "poured-over" into your trust to be distributed according to the terms of the trust.



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**Six-Pack Documents #3 and #4:
Powers of Attorney for Property and Healthcare**



The Powers of Attorney for Property and Healthcare give your chosen, trusted agents the ability to make decisions about your property and your healthcare if you become unable to do so yourself.

Britney Spears could have used these documents to save her and her family from a costly legal fight to obtain guardianship over her affairs.



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**Six-Pack Documents #5 and #6:
Living Will and HIPAA Authorization**


A Living Will provides notice to the world about your wishes for your healthcare upon your last illness.

The HIPAA authorization gives permission for your healthcare professional to reveal your federally protected health information to your trusted agents.

The Terri Schiavo case would have played out much differently had Ms. Schiavo executed a Living Will prior to her disability.



Terri Schiavo



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How do we help Paris Hilton and her fellow heirs and heiresses pass on as much family wealth as possible?

-by allowing maximum leverage of the \$2,000,000 exemption amount (the value of your estate that you can give away for free)

Means: Simple estate tax strategies, including:

- Re-arranging Ownership and A/B Planning (for combined estates under \$4,000,000)
- Tenancy-in-Common Ownership of Assets (for reducing the size of combined estates greater than \$4,000,000)
- Many other "alphabet soup" strategies (ILIT, QPRT, GRAT, CRUT)*

* These devices will not be discussed in this presentation, but can be used to remove from the value of the estate Life Insurance, income producing investment property, residences, or as a device for giving to charity.




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Estate Tax in the United States

- It's a transfer tax, applicable to the value of the "gross estate" of a deceased person.
- It's a tax with an identity crisis.
 - 2008: Estate tax only applicable to estates greater than \$2M
 - 2009: Estate tax only applicable to estates greater than \$3.5M
 - 2010: No estate tax
 - 2011: Estate tax applicable to estates greater than \$1M
- Estate Tax Rates
 - 2008-2009: 45%
 - 2011: 60%
- Marital Deduction: Any property a decedent passes to his spouse is fully deducted from the decedent's gross estate.

Future is uncertain!




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Estate Tax Illustration

Al Estate		Peg Estate	
Asset	Value	Asset	Value
Shoe Store	\$1,500,000	401(K) Account	\$500,000
Life Insurance--Peggy Beneficiary	\$1,000,000	Inheritance	\$500,000
Chicago Home	\$500,000		
Total	\$3,000,000	Total	\$1,000,000




Al and Peggy Bundy

Estate Tax on 2008 Deaths
Assumes Will that gives everything to surviving spouse and then to children

Peggy dies first: Her entire estate goes to Al, wasting her entire \$2,000,000 exclusion; then

Al's death: His estate is worth \$4,000,000 (Al's \$3M + Peg's \$1M), after his \$2,000,000 exclusion amount, the tax is 45% of \$2,000,000 or \$900,000



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Effect of Re-Arranging Ownership Strategy

Al and Peggy's estates are out of balance (Al = \$3M, Peg = \$1M) and their current Will and distribution pattern wastes the exclusion amount of the first to die. First, Al and Peg need to balance the assets of their estate to the extent possible. To do this, Al might give Peg 50% in his shoe store and 50% of the family's Chicago home.

Al Estate		Peg Estate	
Asset	Value	Asset	Value
Shoe Store	\$750,000	401(K) Account	\$500,000
Life Insurance--Peggy Beneficiary	\$1,000,000	Inheritance	\$500,000
		Shoe Store	\$750,000
Chicago Home	\$250,000	Chicago Home	\$250,000
Total	\$2,000,000	Total	\$2,000,000

There are numerous ways of accomplishing this balancing, some of which do not require the outright gift of property from Husband to Wife.



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Effect of A/B Planning Strategy

This strategy takes advantage of the "marital deduction" for estate taxes.
(Example: At the death of Husband, Husband's will transfers his entire \$100M estate to Wife, no estate tax is due.)

At Al's death, his revocable trust would distribute his assets to two trusts. First, he would transfer \$2,000,000 to a "Family Trust." This provides Al the ability to take full advantage of his \$2,000,000 exclusion amount. Al's revocable trust would distribute the remaining \$1,000,000 of Al's estate to a "Marital Trust":

- Peggy would have only an income interest in the Family Trust for her life;
- Peggy would have an interest in the income and principal of the Marital Trust for her life.

At Peggy's death, her estate includes only \$2,000,000 in assets, thus no estate tax:

- \$1,000,000 of her own assets
- \$1,000,000 of assets held for her benefit in the Marital Trust

The assets transferred to the Family Trust at Al's death are later transferred to Al and Peggy's children at Peggy's death.

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A/B Planning Illustration: Assuming Asset Balancing

At Al's Death

- Al: \$2M
- Peg: \$2M
- Family Trust: \$2M (Peg: Income Only)
- Marital Trust: \$0 (Peg: Income and Principal)

At Peg's Death

- Kelly
- Bud

At Al's death, Al uses his \$2M estate tax credit to fund the Family Trust and places the remainder of his estate in the Marital Trust. The transfer to the Marital Trust qualifies for the Marital Deduction, thus, Al's entire estate is shielded from estate tax.

At Peg's death, her estate includes the \$2M that she holds which she passes to Kelly and Bud. This entire amount is shielded from estate tax by Peg's \$2M exclusion amount.

At Peg's death, Kelly and Bud can receive the assets of the Family Trust, the Marital Trust and Peg's assets, or these transfers can be delayed depending on Al and Peg's wishes.

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A/B Planning Illustration: Assuming No Asset Balancing

At Al's Death

- Al: \$3M
- Peg: \$1M
- Family Trust: \$2M (Peg: Income Only)
- Marital Trust: \$1M (Peg: Income and Principal)

At Peg's Death

- Kelly
- Bud

At Al's death, Al uses his \$2M estate tax credit to fund the Family Trust and places the remainder of his estate in the Marital Trust. The transfer to the Marital Trust qualifies for the Marital Deduction, thus, Al's entire estate is shielded from estate tax.

At Peg's death, her estate includes the \$1M that she holds in her name and the \$1M in the Marital Trust, totaling \$2M that she passes to Kelly and Bud. This entire amount is shielded from estate tax by Peg's \$2M estate tax credit.

At Peg's death, Kelly and Bud can receive the assets of the Family Trust, the Marital Trust and Peg's assets, or these transfers can be delayed depending on Al and Peg's wishes.

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A/B Planning Illustration: Assuming Estate in excess of \$4,000,000

At Al's Death

Al: \$3M

Peg: \$2M

Family Trust: \$2M
Peg: Income Only

Marital Trust: \$1M
Peg: Income and Principal

At Peg's Death


Kelly

Bud

At Al's death, Al uses his \$2M estate tax credit to fund the Family Trust and places the remainder of his estate in the Marital Trust. The transfer to the Marital Trust qualifies for the Marital Deduction, thus, Al's entire estate is shielded from estate tax.

At Peg's death, her estate includes the \$2M that she holds in her name and the \$1M in the Marital Trust, totaling \$3M that she passes to Kelly and Bud. Peg's exclusion amount shields \$2M of this amount from the estate tax, but there would be an estate tax due on the remaining \$1M.

At Peg's death, Kelly and Bud can receive the assets of the Family Trust, the Marital Trust and Peg's assets, or these transfers can be delayed depending on Al and Peg's wishes.



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Reducing the size of an estate through the Tenancy-in-Common Ownership Strategy

Basic Assumption: The fair market value of a fractional interest in property is subject to a discount from the full value of the property.


Example: Your neighbor's home is worth \$500,000. Your neighbor and his wife get a divorce, the wife is entitled to 50% of the value of the home. Your neighbor doesn't want to move, so he asks if you'll buy his wife's 50% interest. Would you pay \$250,000 for it?

Probably not...because:

- Your neighbor plans to relive his youth by forming a garage jam band that will practice three times per week;
- Your neighbor has a dog with overactive salivary glands that will live in the home; and
- Your neighbor has an Elvis memorabilia collection he proudly displays in the living room.



Because you stand to own only a 50% interest in the property, you lack the ability to control the property, thus making it less marketable and less valuable.



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Effect of Tenancy-in-Common Ownership Strategy


Conservative TIC discounts generally range from 15% to 20%.

- Your neighbor's house is worth \$250,000
- A 20% discount would reduce the price of the home to \$200,000
 $(\$250,000 \times 20\% = \$50,000 \rightarrow \$250,000 - \$50,000 = \$200,000)$

Although your wife or husband may not plan to form a garage band, TIC discounts are still available to husband and wife co-owners of property:

- Al and Peg Bundy's home is worth \$500,000, they own the home in joint tenancy
- If Al and Peg re-title their home so that each owns a 50% TIC interest, they can each discount the value of their interest
- If a 20% discount is applied, Peg and Al have just reduced the value of their individual estates by \$50,000



TIC discounts can be used for securities, real property and other assets.



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After Execution of Estate Plan

The estate plan should be reviewed and updated to:

1. Reflect changes in law
2. Reflect changes in family (divorce, family infighting, marriage, newborn children)
3. Reflect changes in wealth (new and more sophisticated estate planning strategies may be advisable)



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Thank you!

Questions?

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This presentation has been recorded and will be available for replay/download, along with the slides and podcast, at:
<http://www.snsfe-law.com/lawyer-attorney-1096383.html>

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